

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2012120084

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2012110811

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

ORDER GRANTING MOTION TO
CONSOLIDATE

On November 27, 2012, Hans Albert Gillinger, Attorney for Student, filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing in OAH case number 2012110811 (First Case), naming the Los Angeles Unified School District (District). On November 29, 2012, OAH issued a scheduling order for the First Case setting mediation for January 3, 2013, the prehearing conference (PHC) for January 14, 2013, and the due process hearing for January 23, 2013.

On December 3, 2012, Student filed a Request for Due Process Hearing in OAH case number 2012120084 (Second Case), again naming the District. On December 5, 2012, OAH issued a scheduling order in the Second Case setting mediation for January 8, 2013, the PHC for January 23, 2013, and the due process hearing for January 29, 2013.¹

On December 7, 2012, Student filed a Motion to Consolidate the First Case with the Second Case. On December 12, 2012, Patrick J. Balucan, Attorney for the District, filed a non-opposition to Student's motion to consolidate.²

¹ Although Counsel for Student indicates that each matter has been set for a one day hearing, the scheduling orders clearly indicate that the hearing shall continue day-to-day Monday through Thursday, as needed and at the discretion of the Administrative Law Judge.

² The District has not filed a notice of representation in either the First Case or the Second Case. To ensure that Counsel for the District is served with all orders, Counsel is advised to file his notice of representation.

APPLICABLE LAW

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

DISCUSSION

Here, Student's First and Second Case both involve common questions of law and fact, specifically, whether the District offered Student a free appropriate public education (FAPE) in the least restrictive environment (LRE) through its individualized education program (IEP) offers from February 2012 through the present time. Student is requesting the same remedies in each case.

In his First Case, Student focuses on the District's February and June 2012 IEP offers and identifies as issues for hearing the District's failure to offer Student a FAPE by failing to develop appropriate measurable goals in all areas of suspected disability; failing to implement the January 31, 2012 settlement agreement when it failed to provide Parents with weekly communication regarding Student's behaviors and failed to provide the required amount of resource specialist program services; failing to offer appropriate behavior intervention services including the provision of a full time one-on-one behavior interventionist trained in Applied Behavior Analysis (ABA) principles; failing to conduct a Functional Analysis Assessment (FAA); failing to develop a behavior intervention plan (BIP); failing to offer extended school year services for the 2011-2012 and 2012-2013 school years; and by failing to provide Student a placement in the LRE.

In his Second Case, Student places at issue the District's October 2012 IEP offer. The Second Case again identifies as issues for hearing the District's failure to offer Student a FAPE by failing to offer appropriate behavior intervention services; failing to conduct an FAA; failing to develop a BIP; failing to offer a behavior interventionist trained in ABA principles and failing to offer a placement in the LRE.

Student's Second Case encompasses many of the same issues in the First Case as they relate to the October 2012 IEP offer. Consolidation furthers the interests of judicial economy as the same parties and the same witnesses will be required to testify in each proceeding. The District does not oppose Student's motion. Student's motion for consolidation is granted. When consolidating cases, OAH designates the statutory timelines applicable to the

consolidated matters to be controlled by one of the cases. Here, the statutory timelines shall be controlled by the Second Case.³

ORDER

1. Student's Motion to Consolidate is granted.
2. All dates previously set in the First Case, OAH Case Number 2012110811, are vacated.
3. The consolidated matters shall now be heard on the dates set for the Second Case in OAH Case Number 2012120084. The mediation in the consolidated cases shall be held on January 8, 2013 at 1:30 p.m. The PHC shall be held on January 23, 2013 at 10 a.m., and the due process hearing in the consolidated cases shall be held on January 29, 2013, starting at 9:30 a.m. on the first day, continuing day-to-day Monday through Thursday.
4. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in the Second Case, OAH Case Number 2012120084.

Dated: December 13, 2012

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

³ In his motion to consolidate, Student states that he cancelled the resolution session and mediation for the First Case and wishes to attend only one resolution session for both matters. OAH does not consider such statements to constitute a waiver of the resolution session or a request to advance the hearing timelines.